

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

DANNY HEBERT

PLAINTIFF

v.

Civil No. 05-4084

JO ANNE B. BARNHART,
Commissioner, Social
Security Administration

DEFENDANT

MEMORANDUM AND ORDER

Pending now on this 28th day of March, 2006, is the Defendant's Motion to Remand filed by the Commissioner of the Social Security Administration (hereinafter "Commissioner"), on March 27, 2006 (Doc. #12). Plaintiff filed his Response on the same date, offering no objection to the requested relief (Doc. #13).

In the instant motion, the defendant asserts that remand of this matter is necessary to enable her to conduct further administrative proceedings (Doc. #8, p. 1). Specifically, the motion asserts:

The Commissioner seeks remand in order that the ALJ may conduct a proper evaluation of Plaintiff's subjective complaints pursuant to *Polaski v. Heckler*, 751 F.2d 943, 948 (8th Cir. 1984), 20 C.F.R. § 404.1529, and *Social Security Ruling (SSR) 96-7p*. The ALJ will evaluate the Plaintiff's subjective complaints for the period in question, setting forth his consideration of each of the factors discussed in *Polaski*, 20 C.F.R. § 404.1529, and *SSR 96-7p*. The ALJ will also obtain Medical Expert testimony from an orthopedist, and if medical improvement is found, the ALJ will provide a proper rationale for such finding and his residual functional capacity finding.

(Doc. #12, p. 1).

Further, the defendant submits that the Court remand this matter pursuant to sentence four of 42 U.S.C. § 405(g) (Doc. #12, p. 2). In his

Sentence four provides:

The court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the [Commissioner], with or without remanding the cause for a rehearing.

42 U.S.C. § 405(g).

Accordingly, we conclude that the defendant's motion requesting reversal of the decision and remand of this matter for the above stated reasons, is well taken. The Commissioner's decision is reversed and this matter is hereby remanded, pursuant to sentence four, *42 U.S.C. § 405(g)*, for further proceedings, as specifically set forth above and in the Commissioner's motion (Doc. #12).

In addition, the undersigned finds that the plaintiff's Complaint should be and hereby is dismissed without prejudice to the subsequent filing for attorney's fees, pursuant to the Equal Access to Justice Act, *28 U.S.C. § 2412*. A separate Judgment shall be entered herein pursuant to *F.R.Civ.P. 58* and *52*.

IT IS SO ORDERED.

/s/ Bobby E. Shepherd

HONORABLE BOBBY E. SHEPHERD
UNITED STATES MAGISTRATE JUDGE